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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

Switch Communications Group, LLC, a  
 Nevada limited liability company.

v.

Dorian Banks, an individual.

Case No.

**PLAINTIFF SWITCH  
 COMMUNICATIONS' APPLICATION  
 FOR TEMPORARY RESTRAINING  
 ORDER AND MOTION FOR  
 PRELIMINARY INJUNCTION**

Plaintiff Switch Communications Group, LLC., through counsel, hereby moves the Court for (1) an *ex parte* temporary restraining order requiring Defendant to immediately cease and desist all use of Plaintiff's names, trademarks and domain names and requiring the domain name registrar to transfer the <switch.net> domain name ("Infringing Domain Name") to Plaintiff and place such Infringing Domain Name on hold; (2) a preliminary injunction requiring Defendant to transfer the Infringing Domain Name to Plaintiff; and (3) a preliminary injunction requiring the current domain name registrar(s) to transfer the Infringing Domain Name to Plaintiff.

This Motion is made pursuant to Rule 65 of the Federal Rules of Civil Procedure and is based upon the attached Memorandum of Points and Authorities, the Declaration of Thomas Morton ("Morton Decl.") and the Declaration of Laraine M. I. Burrell ("Burrell

Decl.”), the papers and pleadings on file herein and any oral argument that this Court may allow.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF’S  
MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**I. INTRODUCTION AND STATEMENT OF GOOD CAUSE IN COMPLIANCE WITH  
LR 7-5**

This Motion is brought under Plaintiff’s claims for violation of the Anticybersquatting Consumer Protection Act (the “ACPA”), trademark infringement, and unfair competition under the Lanham Act (15 U.S.C. §§ 1114 and 1125) and trademark infringement under Nevada law (collectively, the “Relevant Claims”). Plaintiff’s Motion arises from Defendant’s unauthorized use of the Plaintiff’s marks and Defendant’s registration of the Infringing Domain Name.

Defendant registered and uses, or intends to use in bad faith the Infringing Domain Name and Plaintiff’s marks. Defendant is likely to deceive the public into believing that Defendant is somehow authorized by or affiliated with Plaintiff’s well-known company when he is not. Defendant is diluting Plaintiff’s well-known marks and is wrongfully benefiting and profiting from Plaintiff’s goodwill.

More egregiously, Defendant offered to sell the Infringing Domain Name to Plaintiff in violation of the ACPA, and if Plaintiff refused to purchase the domain name Defendant threatened to sell it to third parties, including a group situated abroad.

Therefore, Plaintiff seeks a temporary restraining order and a preliminary injunction requiring the transfer of the Infringing Domain Name to Plaintiff and enjoining Defendant from continuing his infringement of Plaintiff’s marks during the pendency of this action.

Plaintiff is seeking a temporary restraining order *ex parte* to avoid irreparable injury that will result if Defendant receives advance notice of Plaintiff’s request. See Burrell Decl., attached hereto as **Exhibit 1**, at ¶¶ 3-5. An *ex parte* order will prevent Defendant from transferring the Infringing Domain Name to other registrars and/or other registrants during the pendency of this action. As soon as Defendant receives notice of this action, he could

1 easily and nearly instantaneously transfer the registration of the Infringing Domain Name  
 2 from the current registrar to any number of other registrars located outside the United  
 3 States as well as to other registrants unwilling to abide by this Court's orders.<sup>1</sup> In fact,  
 4 Defendant has already threatened to sell the domain name to third parties, including a  
 5 foreign entity. See Emails attached as **Exhibit 1** to the Morton Decl., attached hereto as  
 6 **Exhibit 2**.

7 This is all particularly likely where, as here, the Defendant is foreign. If this were to  
 8 occur, Plaintiff would be deprived of the ability to recover registration of the Infringing  
 9 Domain Name and the ability to enforce its intellectual property rights. Accordingly, this  
 10 Court should enter a temporary restraining order directing the Defendant and the Registrar  
 11 to transfer the Infringing Domain Name to Plaintiff during the pendency of this action,  
 12 thereby preventing any further migration of the Infringing Domain Name and the need to file  
 13 additional lawsuits to chase the Infringing Domain Name in an attempt to recover the  
 14 Infringing Domain Name.

## 15 II. STATEMENT OF FACTS

### 16 A. Facts Regarding Plaintiff.

17 Plaintiff Switch Communications Group LLC is a Nevada corporation with its  
 18 principal place of business in Las Vegas, Nevada. Switch builds and operates the world's  
 19 most powerful data center and technology ecosystems. See Morton Decl., attached hereto  
 20 as **Exhibit 2**, at ¶ 3.

21 Switch owns variants of the mark SWITCH, and has obtained federal mark  
 22 registrations for a number of SWITCH marks, including but not limited to:

23  
 24  
 25  
 26 <sup>1</sup> While registrars who are accredited by the Internet Corporation of Assigned Names and Numbers  
 27 ("ICANN") are required to subscribe to ICANN's Uniform Dispute Resolution Policy ("UDRP"), which requires  
 28 the registrar to obey and follow the order of a court of "competent jurisdiction" over the registrant to transfer a  
 domain name, as to those registrars that are not within the jurisdiction of the court or that do not subscribe to  
 the ICANN rules, neither the Lanham Act nor the courts will have any power over them. See UDRP Rule 4, at  
[www.icann.org/udrp/udrp.htm](http://www.icann.org/udrp/udrp.htm).  
 3.

- (a) SWITCH COMMUNICATIONS GROUP for providing telecommunications connections to a global computer network and colocation services (U.S. Reg. No. 3,229,168);
- (b) SWITCH T-SCIF for providing telecommunications connections to the internet and colocation services (U.S. Reg. No. 3,547,908);
- (c) SWITCH WDMD for colocation services (U.S. Reg. No. 3,540,816),
- (d) SWITCHNAP for providing telecommunications to the internet and colocation services (U.S. Reg. No. 3,547,909),
- (e) SWITCHNAP WORLD for providing telecommunications connections to the internet and colocation services (3,880,400),
- (f) SWITCHFORCE, for security guard services, designing security systems for others, security surveillance services, guard night-watch services, alarm center services, mobile and stationary security guard services, alarm rescue services, alarm rescue services; photographic surveillance services, detective agencies; interior decoration consultation, engineering and legal counseling services; development of bar-code systems; computer programming for others; computer software design for others, up-dating and maintenance of computer software (U.S. Reg. No. 3,942,121),
- (g) SWITCHSAFE for computer disaster recovery services (U.S. Reg. No. 3,946,128),
- (h) SWITCHWORKS for design and installation of computer hardware and software systems for others (U.S. Reg. No. 3,942,079),
- (i) SWITCHMOD for colocation facility development services (U.S. Reg. No. 3,984,525),
- (j) SWITCH L.D.C. for providing management of building operation systems; computer software and hardware for energy use

1 management, air conditioning and energy usage monitoring and  
2 management systems (U.S. Reg. No. 3,984,524), and  
3 (k) SWITCHMACRO-MOD for colocation facility development services  
4 (U.S. Reg. No. 3,984,966).

5 None of these federal trademark registrations has been abandoned, canceled or revoked.  
6 *See id.* at ¶ 5. None of these federal trademark registrations has been abandoned,  
7 canceled or revoked.

8 Since Switch commenced operations in 2003, it has continuously used SWITCH and  
9 related marks in connection with advertising and promoting its services in the United States  
10 and around the world. *See id.* at ¶ 6. The SWITCH name is well-known and well-  
11 respected in the data center industry, and due to its size and unparalleled capabilities, has  
12 been covered by CNN Money, Vegas Inc., the Wall Street Journal, and CNBC, among  
13 other outlets. Switch has spent substantial sums of money to advertise and promote the  
14 SWITCH marks in print, broadcast media and on the internet through the Switch website,  
15 accessible throughout the United States and around the world at <switchnap.com>. *See id.*  
16 at ¶ 7. A true and correct copy of the home page for the Switch website is attached hereto  
17 as **Exhibit 3** and is incorporated by this reference. In addition, Switch has made extensive  
18 use of the SWITCH marks on, among other things, providing telecommunications to the  
19 internet and colocation services, and security guard services, designing security systems  
20 for others, and security surveillance services.

21 Based on its federal trademark registrations and extensive use, Switch owns the  
22 exclusive right to use its SWITCH marks in connection with telecommunications, internet  
23 colocation, and other similar services. *See id.* at ¶ 8. In fact, the uniqueness of Switch has  
24 resulted in the SWITCH name and mark being distinctive and famous for these services.  
25 *See id.*

26 **B. Facts Regarding Defendant.**

27 Upon information and belief, Defendant Dorian Banks is an individual who resides in  
28 Vancouver, British Columbia, Canada. On or about October 15, 2011, Defendant

1 registered the <switch.net> domain name with Enom423 Incorporated, a registrar for  
2 domain names. See WHOIS Records for <switch.net>, attached hereto as **Exhibit 4**. The  
3 domain name contains Plaintiff's famous trademark.

4 On or about October 31, 2011, Defendant contacted Plaintiff's employee and offered  
5 to sell Plaintiff the domain name. See Morton Decl, **Exhibit 2**, at ¶ 11. Defendant offered  
6 to sell the domain name for approximately \$3,700. See **Exhibit 1** to the Morton Decl.  
7 While Plaintiff evaluated the offer to negotiate the purchase of the domain name, Defendant  
8 threatened to sell the domain name to another entity if Plaintiff did not hurry and open  
9 escrow to buy the domain name. See Morton Decl., ¶ 12.

10 **C. Factual Background Regarding the Internet and Domain Names.**

11 Every web site on the World Wide Web of the Internet has a unique numerical  
12 address called an Internet Protocol address, comprised of four numbers ranging from 1 to  
13 255, separated by decimals, such as 137.34.23.198. See e.g., America Online, Inc. v.  
14 Huang, 106 F. Supp. 2d 848, 850-53 (E.D. Va. 2000). In response to the consideration that  
15 most individual users would have difficulty remembering strings of numbers, the domain  
16 name system ("DNS") was developed to make the World Wide Web more user friendly.  
17 The DNS associates a unique alphanumeric name, the "domain name," with each Internet  
18 Protocol address. See id.; Sporty's Farm L.L.C. v. Sportsman's Market, Inc., 202 F.3d 489,  
19 492-93 (2d Cir. 2000).

20 Domain names are comprised of a letter string of up to 26 letters, known as a  
21 second-level domain ("SLD"), followed by a period (referred to in the pejorative as a "dot"),  
22 which is then followed by a generic top-level domain ("TLD"). See America Online, 106 F.  
23 Supp.2d at 850-53. TLDs include ".com," intended for commercial use, ".net" for networks,  
24 ".org" for non-profit organizations, and ".gov" for governmental entities, among several  
25 others. Significantly, the ".net" TLD, as well as several other TLDs, is an open domain,  
26 such that anyone can register a domain name in the ".net" TLD without oversight by the  
27 registrar. See Sporty's Farm, 202 F.3d at 493.

28 ///

1 The ".Net" extension is an abbreviation for "networking." Many Internet or data-  
2 related businesses, or businesses seeking to grow the company through networking,  
3 strongly prefer to create domain names for their web sites that couple the .net TLD with an  
4 SLD comprised of their distinctive trademark.<sup>2</sup> However, there is no equivalent of the  
5 telephone book or directory assistance on the Internet. Therefore, consumers must  
6 intuitively locate a particular company's web site and, usually, guess that the company's  
7 web site is the same as its name. See Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316,  
8 1327 (9<sup>th</sup> Cir. 1998). If a consumer cannot find a particular company's web site through this  
9 intuitive process, he will become discouraged and may fail to continue to search for a  
10 company's own web site. See id. Consequently, there is an inherent value attached to  
11 domain names that incorporate a company's trademark or marks confusingly similar to a  
12 company's trademark, such as a common misspelling.

13 Domain names are registered on a first-come, first-served basis. See e.g., Network  
14 Solutions, Inc. v. Umbro Int'l, Inc., 529 S.E. 2d 80, 84-85 (Va. 2000). The process for  
15 obtaining a domain name is rather mechanical. An individual interested in registering a  
16 domain name must contact one of the official registrars for domain names, such as  
17 Network Solutions, Inc. If the desired domain name has not been registered, then the user  
18 may register or reserve the domain name for a fee. See id. However, there is no oversight  
19 process to ensure that the person or entity registering the domain name has any right to  
20 use the name, or to ensure that the domain name does not match a trademark held by  
21 someone other than the registrant. See id.

22 As a result of the fact that anyone can register any domain name as long as it is not  
23 already registered, many businesses attempt to register domain names based on their  
24 trademarks and, unfortunately, discover that the domain name employing their trademark  
25 has already been registered by another. In many cases, the domain names are registered  
26 by individuals or businesses who then attempt to sell the domain name employing the  
27 trademark back to the trademark owner. See Virtual Works, Inc. v. Volkswagen of Am.,  
28

<sup>2</sup> See <http://www.name.com/domains/net>



1 Inc., 238 F.3d 264, 267 (4<sup>th</sup> Cir. 2001). This conduct is referred to as “cyberpiracy” or  
2 “cybersquatting.” See id.

3 Unlike a traditional trademark dispute, where identical marks can be used by  
4 multiple parties (e.g., *United Airlines* and *United Van Lines*), only one party can register a  
5 domain name. See Victoria’s Cyber Secret, Ltd. v. V. Secret Catalogue, Inc., 161  
6 F.Supp.2d 1339, 1351 (S.D. Fla. 2001). Thus, the slight differences between domain  
7 names and registered marks, such as misspellings or the addition of minor or generic  
8 words to the disputed domain names are irrelevant to the cybersquatting analysis. See id.

### 9 III. LEGAL ARGUMENT

10 Plaintiff is entitled to an *ex parte* temporary restraining order and a preliminary  
11 injunction directing the Registrar to transfer and place on hold the Infringing Domain Name  
12 pending trial. Plaintiff is also entitled to a preliminary injunction transferring the Infringing  
13 Domain Name and enjoining Defendant from further registration or use of the Infringing  
14 Domain Name for the pendency of the litigation.

15 To obtain a preliminary injunction, Plaintiff must show that: (1) it will suffer  
16 irreparable harm if injunctive relief is not granted; (2) it is likely to succeed on the merits; (3)  
17 the balance of equities tips in favor of the moving party; and (4) granting the injunction is in  
18 the public interest. See Stanley v. University of Southern California, 13 F.3d 1313, 1319  
19 (9<sup>th</sup> Cir. 1994). Alternatively, this Court may issue injunctive relief if it finds: (1) a  
20 combination of probable success on the merits and the possibility of irreparable injury if  
21 relief is not granted, or (2) the existence of serious questions going to the merits and that  
22 the balance of hardships tips sharply in its favor. See GoTo.com, Inc. v. Walt Disney Co.,  
23 202 F.3d 1199, 1205 (9<sup>th</sup> Cir. 2000). A “serious question” is one for which the moving party  
24 has a “fair chance” of success on the merits. See Stanley, 13 F.3d at 1319. In the instant  
25 case, Plaintiffs are entitled to a temporary restraining order and preliminary injunction under  
26 either test.

27 ///

28 ///



**A. Plaintiff Will Suffer Irreparable Injury if the Court Does Not Grant Preliminary Injunctive Relief.**

A party seeking injunctive relief under Fed. R. Civ. P. 65 must demonstrate irreparable harm, meaning that “money damages alone will not suffice to restore the moving party to its rightful position.” Clark Pacific v. Krump Constr., Inc., 942 F.Supp. 1324, 1346 (D. Nev. 1996). In cases involving mark infringement or mark dilution, it is well settled that irreparable harm is presumed. See GoTo.com, 202 F.3d at 1209; Toys “R” Us, Inc. v. Akkaoui, 40 U.S.P.Q.2d 1836 (N.D. Cal. 1996).

Generally, in cases involving intellectual property infringement, where a likelihood of success on the merits is demonstrated, not only is irreparable harm presumed, but preliminary injunctive relief **must issue**. See Candence Design Sys. Inc. v. Avant! Corp., 125 F.3d 824, 827 (9<sup>th</sup> Cir. 1997). Any other elemental analysis is unnecessary. See id. Therefore, upon a showing of success on the merits of the Relevant Claims, Plaintiff will have met its burden in establishing irreparable harm and will be entitled to injunctive relief.

**B. Plaintiff Is Highly Likely to Succeed on the Merits.**

Plaintiff’s success on the merits is probable with respect to each of the Relevant Claims. However, Plaintiff is only required to demonstrate a probability of success on any one of the Relevant Claims to be entitled to the relief requested.

(1) Plaintiff Is Likely to Succeed on the Merits of Its Anti-Cybersquatting Claim.

Plaintiff is likely to succeed on the merits of its claim under the Anti-Cybersquatting protection Act (the “ACPA”). That Act provides, in pertinent part:

[A] person shall be liable in a civil action by the owner of a mark . . . if, without regard to the goods or services of the parties, that person –

- (i) has a **bad faith intent** to profit from that mark . . .; and
- (ii) registers, traffics in, or uses a domain name that –

- (I) in the case of a mark that is **distinctive** at the time of the registration of the domain name, is **identical or confusingly similar** to that mark; [or]

(II) in the case of a famous mark that is **famous** at the time of registration of the domain name, is **identical or confusingly similar** to that mark. . . .

15 U.S.C. § 1125(d)(1)(A) (emphasis added). Thus, Defendant is liable under the ACPA if he has a bad faith intent to profit from registering, trafficking in or using as a domain name a mark that is either identical or confusingly similar to a distinctive mark or identical, confusingly similar or dilutive of a famous mark.

First, Plaintiff's marks are famous and entitled to protection. Plaintiff's trademarks are **arbitrary trademarks** because they do not suggest the goods and services offered.<sup>3</sup> See Entrepreneur Media, Inc. v. Smith, 279 F.3d 1135, 1141 n. 2 (9<sup>th</sup> Cir. 2002). Alternatively, Plaintiff's marks are **suggestive trademarks** because they "require imagination, thought or perception to link the trademark with the goods offered."<sup>4</sup> Interstellar Starship Services, 304 F.3d at 943 n.6. Generally, arbitrary and suggestive trademarks "receive automatic protection because of their inherent distinctiveness." Id.

Courts consider several factors in assessing whether a person has the requisite "bad faith intent" to profit from the mark, as defined by the ACPA, including but not limited to:

- (I) the trademark or other intellectual property rights of the person, if any, in the domain name;
- (II) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;
- (III) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;
- (IV) the person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;
- (V) the person's intent to divert consumers from the mark owner's online location to a site assessable under the domain name that could harm the goodwill represented by the mark, either for commercial gain with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the site;

<sup>3</sup> For example, the use of "Amazon" as an online bookstore is an arbitrary trademark. See Interstellar Starship Services, Ltd. v. Epix, Inc., 304 F.3d 936, 943 n. 6 (9<sup>th</sup> Cir. 2002).

<sup>4</sup> For example, the use of "Roach Motel" for insect traps is a suggestive trademark. See Interstellar Starship Services, 304 F.3d at 943 n. 6. 10.

- (VI) the person's offer to transfer, sell or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;
- (VII) the person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;
- (VIII) the person's registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, without regard to the goods or services of the parties; and
- (IX) the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous.

15 U.S.C. § 1125 (d)(1)(B). A court is “**not limited to considering just the listed factors** when making [its] determination of whether the statutory criterion has been met. The factors are, instead, expressly described as indicia that ‘may’ be considered along with other factors.” Sporty's Farm, 202 F.3d at 498 (emphasis added).

In this instance, Defendant's email expressly evidences Defendant offering the Infringing Domain Name for sale to the Plaintiff, coupled with the additional threat that if Plaintiff did not hurry up and purchase the domain name, Defendant would sell it to another group. See \*\*\*.

In applying the ACPA factors, it is clear that Plaintiff will be able to demonstrate Defendant's bad faith intent: (1) Defendant has no trademark rights in the registered domain names at issue; (2) the domain name at issue does not contain any of Defendant's legal names; (3) Defendant apparently made no use of the marks contained in the domain name at issue prior to registering the domain name; (4) Defendant has not made any *bona fide* noncommercial or fair use of the domain name at issue; (5) by using marks identical or confusingly similar to Plaintiff's famous trademarks in the domain name for his infringing site, Defendant intends to divert consumers from Plaintiff's web sites and to create a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of

1 Defendant's domain name which will undoubtedly harm the goodwill and reputation created  
 2 by the Plaintiff's trademarks; (6) the marks contained in the domain name at issue is  
 3 confusingly similar to Plaintiff's distinctive trademarks, as discussed below; and (7)  
 4 Defendant offered to transfer, sell or otherwise assign the domain name to Plaintiff, or any  
 5 third party for financial gain without having used, or having an intent to use, the domain  
 6 name in the bona fide offering of any goods or services. Accordingly, at least seven of the  
 7 nine factors clearly weigh in favor of finding that Defendant had the requisite bad faith intent  
 8 to profit from the registration of domain names confusingly similar to Plaintiff's trademarks.

9 Plaintiff also satisfies the second element of its claim under the ACPA. The domain  
 10 name registered by Defendant is either identical or confusingly similar to Plaintiff's  
 11 registered trademarks. The Infringing Domain Name strongly resembles Plaintiff's  
 12 trademarks. The Infringing Domain Name, <switch.net>, is the dominant portion of  
 13 Plaintiff's registered trademarks, SWITCH. Defendant's domain name therefore satisfies  
 14 the "identical or confusingly similar" test of the ACPA. Therefore, this Court should issue a  
 15 temporary restraining order and a preliminary injunction to protect Plaintiff's prior and  
 16 exclusive rights in the marks based upon the probable success of Plaintiff's ACPA claim  
 17 against Defendant.

18 (2) Plaintiff Is Likely to Succeed on the Merits of Its Trademark  
 19 Infringement and Unfair Competition Claims.

20 To succeed on the merits of its trademark infringement or unfair competition claims  
 21 under the Lanham Act, Plaintiff must establish that Defendant's use, or intended use of  
 22 Plaintiff's marks is likely to cause confusion among the consuming public. See 15 U.S.C. §  
 23 1114(a); Metro Publishing Ltd. v. San Jose Mercury News, 987 F.2d 637, 640 (9<sup>th</sup> Cir.  
 24 1993). Such confusion can occur when the infringer's sole action was the registering of an  
 25 infringing domain name. See Green Prods. Co. v. Independence Corn By-Prods. Co., 992  
 26 F.Supp. 1070, 1080 (N.D. Iowa 1997) (holding that the mere domain name registration of a  
 27 competitor's mark resulted in a likelihood of confusion). In fact, Defendant's intent to  
 28 deceive the public by adopting Plaintiff's names and marks without his own valid rights in

the marks creates a presumption of confusion. See Academy of Motion Pictures Arts and Sciences v. Creative House Promotions, 944 F.2d 1446, 1456 (9<sup>th</sup> Cir. 1991). See also Lozano Enterprise v. La Opinion Publishing Co., 44 U.S.P.Q.2d 1764, 1767 (C.D. Cal. 1997), quoting Opticians Ass'n v. Independent Opticians, 920 F.2d 187, 193 (3d Cir. 1990) (holding that a defendant's use of marks identical to the plaintiff's marks for competitive services renders the confusion test under 15 U.S.C. § 1114 "open and shut"). Plaintiff is entitled to injunctive relief based upon the presumption of confusion.

(3) Plaintiff Is Likely to Succeed on the Merits of Its Common Law Trademark Infringement Claim.

Plaintiff will likely succeed on the merits of its mark infringement claim against Defendant under Nevada common law. To show common law mark infringement, Plaintiff need only show: (a) that Plaintiff is the owner of a protectable right in the marks, and (b) that Defendant's registration of the Infringing Domain Name is likely to "confuse, cause mistake or deceive an 'appreciable number' of reasonable customers" with respect to the marks. A.L.M.N., Inc. v. Rosoff, 757 P.2d 1319, 1321 (Nev. 1988).

**(a) Plaintiff Has Protectable Rights in Its Marks.**

As discussed above, Plaintiff has protectable rights in and to the marks based upon Plaintiff's federal registrations of the marks and based upon the exclusive and continuous use of the marks before or since November 2003.

**(b) Defendant's Use of the Infringing Domain Name is Likely to Cause Confusion with Plaintiff's Marks.**

Defendant's use, or intended use, of the Infringing Domain Name and Plaintiff's marks are likely to "confuse, cause mistake or deceive an 'appreciable number' of reasonable customers." See Rosoff, 757 P.2d at 1323. To determine the likelihood of confusion between similar marks, the Supreme Court of Nevada has adopted a seven factor test consisting of: (i) similarity of marks; (ii) similarity of services; (iii) marketing channels used; (iv) evidence of actual confusion; (v) strength of the mark; (vi) junior user's

1 intent in adopting the mark; and (vii) degree of care likely to be exercised by the purchaser.  
 2 Id. at 1324.

3 Plaintiff has already demonstrated the applicability of factors (i), (iii), (v), (vi) and (vii)  
 4 in the discussion above. See Sections III.A, III.B(1), and III.B(2), supra. With regard to the  
 5 fourth factor, courts do not require proof of actual confusion to find a likelihood of confusion.  
 6 See e.g., Drexel Enters., Inc. v. Hermitage Cabinet Shop, Inc., 266 F. Supp. 532, 537  
 7 (N.D.Ga. 1967). Plaintiff has not as yet found it necessary to engage in the expense of  
 8 conducting surveys to identify actual confusion but reserves the right to do so.

9 Plaintiff's probable success, therefore, on its common law mark infringement claim is  
 10 very high. As Plaintiff is the owner of strong marks with prior, continuing and exclusive  
 11 rights and as Defendant's use, or intended use, of the Infringing Domain Name and the  
 12 marks is likely to cause confusion under Nevada law, this Court should issue a temporary  
 13 restraining order and a preliminary injunction to preserve Plaintiff's rights in and to its  
 14 marks.

15 **C. Plaintiff Has Raised Serious Questions as to the Merits, and the**  
 16 **Hardships Balance in Favor of Plaintiff.**

17 Even if Plaintiff's success on the merits of the Relevant Claims, as discussed above,  
 18 was not probable, Plaintiff would be entitled to the injunctive relief requested upon a  
 19 showing that there are serious questions as to the merits of Plaintiff's claims and that the  
 20 balance of hardships weigh in Plaintiff's favor. See A&M Records, Inc. v. Napster, Inc., 239  
 21 F.3d 1004, 1013 (9<sup>th</sup> Cir. 2001) (citation omitted).

22 The first prong of this alternative test requires a far lower showing than probable  
 23 success on the merits. All that need be shown is the mere existence of serious questions  
 24 as to the merits of Plaintiff's claims. See A&M, 239 F.3d at 1025 (where the first prong of  
 25 the alternative test was met by the mere raising of meritorious issues that were the subject  
 26 of the claims alleged). Plaintiff meets this prong as it has raised serious questions going to  
 27 the merits of the Relevant Claims. These serious questions include, without limitation, all of  
 28 the elements of each of the Relevant Claims upon which Plaintiff has demonstrated



1 | probable success. *See id.* (where the serious questions raised were merely elements of  
 2 | the claims for which the plaintiffs were seeking injunctive relief). As these serious  
 3 | questions have already been raised in the above probable success analysis, they need not  
 4 | be repeated here.

5 | Further, the hardships strongly balance in favor of Plaintiff. Issuance of the  
 6 | injunction would merely require Defendant to stop using identical or confusingly similar  
 7 | names or marks. Defendant is still permitted to register non-infringing domain names.

8 | In contrast, by failing to issue the injunction, Defendant would be allowed to sell the  
 9 | Infringing Domain Name to third parties for his financial benefit. Also, Defendant could  
 10 | generate business by virtue of Plaintiff's famous names and marks. Moreover, the use  
 11 | would also cause the dilution and tarnishment of Plaintiff's names and marks. Plaintiff  
 12 | would suffer a loss of control over its goodwill and reputation, over which Defendant now  
 13 | exercises a disconcerting amount of worldwide control through the Internet.

14 | Finally, issuance of the injunction will maintain the status quo. "[T]he status quo is  
 15 | the last uncontested status which preceded the pending controversy." Tanner Motor  
 16 | Livery, Ltd. v. Avis, Inc., 316 F.2d 804, 809 (9<sup>th</sup> Cir. 1963), cert denied, 375 U.S. 821  
 17 | (1963). Defendant's acts referenced in Plaintiff's Complaint occurred on or about October  
 18 | 15, 2011 and continues to the present. Accordingly, an injunction would merely return the  
 19 | parties to the status quo that existed about one month ago, before Defendant began  
 20 | offering to sell the Infringing Domain Name to the Plaintiff, and to third parties.

#### 21 | **D. Protection of Consumers Weighs in Favor of Injunctive Relief.**

22 | The primary goal of trademark law is to protect consumers against deception. *See*  
 23 | Lozano, 44 U.S.P.Q.2d at 1769, citing International Order of Job's Daughters v. Lindeburg  
 24 | & Co., 633 F.2d 912, 918 (9<sup>th</sup> Cir. 1980). In this instance, the consequences of consumer  
 25 | deception are potentially very grave.

26 | In this instance, businesses rely on the integrity of Plaintiff's business services and  
 27 | the security offered to protect customer and public information. Should the domain name  
 28 | be sold or otherwise transferred to a third party who does not have the infrastructure or



1 expertise to offer the secure data services offered by the Plaintiff, or even if the domain  
2 name were retained by the defendant to use for similar services, there is a strong chance  
3 that customer and public information will not be safe. Because there is a chance that  
4 consumers' personal information will not be safe when given to Defendant, or to third  
5 parties, it is imperative that consumers not be led into believing that they are dealing with  
6 Plaintiff's reputable businesses, when, in fact, they are not.

7 **E. This Court Should Only Require Nominal Security.**

8 In the event that the Court requires that a bond or other security be posted by  
9 Plaintiff, Plaintiff requests that the Court set an amount that is no greater than \$100.  
10 Plaintiff is well established in Nevada. During the pendency of this litigation, Defendant  
11 would not suffer from having the registration for the Infringing Domain Name maintained  
12 with Plaintiff's registrar for the pendency of the litigation.

13 **F. In Addition to the Notice Requirements of Rules 4 and 5 of the Federal**  
14 **Rules of Civil Procedure, Notice Should be Permitted Via E-Mail.**

15 Plaintiff requests that this Court permit service of the summons, complaint, motion,  
16 temporary restraining order and notice of the hearing on the preliminary injunction by e-  
17 mail, in addition to effectuating service as mandated by Fed. R. Civ. P. 4 and 5. Otherwise,  
18 a just, speedy and inexpensive determination of the preliminary injunction cannot be  
19 achieved. See Fed. R. Civ. P. 1.

20 If the Court grants Plaintiff's request for a temporary restraining order, the order will  
21 only remain in effect for ten (10) days and the hearing on the preliminary injunction must  
22 occur "at the earliest possible time" prior to the expiration of the temporary restraining  
23 order. Fed. R. Civ. P. 65(b). The process of serving Defendant with the summons,  
24 complaint, motion, temporary restraining order and order for hearing on the preliminary  
25 injunction could exceed the ten (10) day period and, most likely, not afford Defendant timely  
26 notice of the temporary restraining order and the preliminary injunction. And, as explained  
27 above, Plaintiff would be irreparably harmed if the temporary restraining order were to  
28 expire before it could be converted into a preliminary injunction. Therefore, in addition to


1 regular service of the complaint, summons, motion and orders under Fed. R. Civ. P. 4 and  
 2 5, service by e-mail would ensure prompt notice to Defendant and would be reasonably  
 3 calculated to provide sufficient and adequate notice to Defendant.

#### 4 IV. CONCLUSION

5 Based upon the foregoing Points and Authorities, Plaintiff has shown that it meets  
 6 either of the two alternative tests developed by the United States Court of Appeals for the  
 7 Ninth Circuit for entitlement to injunctive relief. Plaintiff has demonstrated that success as  
 8 to each or the Relevant Claims is, at the very least, probable. Alternatively, Plaintiff has  
 9 raised serious questions and shown that the balance of hardships tips in its favor.  
 10 Accordingly, Plaintiff respectfully requests that the Court grant its Motions for a Temporary  
 11 Restraining Order and for a Preliminary Injunction pending adjudication of this matter on  
 12 the merits.

13 DATED: November 9, 2011.

14 GREENBERG TRAURIG, LLP

15 

16 Lauri S. Thompson (Bar No. 6846)  
 17 Laraine Burrell (Bar No. 8771)  
 18 Shauna Welsh (Bar No. 11320)  
 19 3773 Howard Hughes Parkway  
 20 Suite 400 North  
 21 Las Vegas, Nevada 89169  
 22 Counsel for Switch Communications Group  
 23  
 24  
 25  
 26  
 27  
 28

# **EXHIBIT 1**

1 LAURI S. THOMPSON, ESQ.  
Nevada Bar No. 6846  
2 thompsonl@gtlaw.com  
LARAIN BURRELL, ESQ.  
3 Nevada Bar No. 8771  
burrelll@gtlaw.com  
4 SHAUNA WELSH, Esq.  
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5 walshs@gtlaw.com  
GREENBERG TRAURIG, LLP  
6 3773 Howard Hughes Parkway  
Suite 400 North  
7 Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
8 Facsimile: (702) 792-9002  
*Counsel for Plaintiff,*  
9 *Switch Communications Group, LLC.*

10  
11 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

12 Switch Communications Group,  
13 LLC, a Nevada limited liability  
company;

14 Plaintiff,

15 v.

17 Dorian Banks, an individual,  
18 Defendant.  
19

Case No.:

**DECLARATION OF LARAIN BURRELL, IN SUPPORT OF  
PLAINTIFF'S MOTION FOR *EX PARTE*  
TEMPORARY RESTRAINING ORDER**

20 I, LARAIN BURRELL, declare under penalty of perjury under the laws of the United  
21 States that the facts contained herein are of my personal knowledge, and if called upon, I could and  
22 would competently testify to them. This declaration is submitted in support of Plaintiff's  
23 Application for Temporary Restraining Order and Motion for Preliminary Injunction.

24 1. I am an associate with Greenberg Traurig, counsel for Plaintiff in the above-  
25 referenced matter. I have been employed by Greenberg Traurig, Las Vegas, or its predecessor-in-  
26 interest, Quirk & Tratos, since May of 2003.

27 2. This Declaration is submitted in support of Plaintiff's *ex parte* Motion for Temporary  
28 Restraining Order.

GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002

3. Greenberg Traurig has filed hundreds of anti-cybersquatting actions since the passage of the Anti-cybersquatting Consumer Protection Act (the "ACPA"), 15 U.S.C. § 1125(d)(1)(A), and I personally have filed over fifty anti-cybersquatting actions.

4. I have requested an *ex parte* Temporary Restraining Order in each anti-cybersquatting action I have filed.

5. Following the passage of the ACPA, plaintiffs quickly realized that providing notice to the Defendant of the lawsuit before the domain name in question was beyond the Defendant's immediate grasp resulted in the Defendant transferring that domain name to another registrant and/or another registrar. Such action by the Defendant negates the court's jurisdiction and requires the filing of a second lawsuit after the Plaintiff spends additional time and fees locating the domain name.

6. In the instant matter, Defendant registered and is using, and is trying to sell in bad faith the <switch.net> domain name (the "Infringing Domain Name") and Plaintiff's registered trademarks.

7. Plaintiff is seeking an *ex parte* Temporary Restraining Order from this Court.

8. Plaintiff requires the Temporary Restraining Order to be granted *ex parte* because as soon as Defendant receives notice of this action, it could easily and nearly instantaneously transfer the registration of the Infringing Domain Name from the current registrar to any number of other registrars located outside the United States as well as to other registrants unwilling to abide by this Court's orders.

9. If Defendant transfers the Infringing Domain Name prior to the hearing on the Motion for Temporary Restraining Order, Plaintiff would be deprived of the ability to recover registration of the Infringing Domain Name and the ability to enforce its intellectual property rights.

10. Therefore, notice to the Defendant prior to the locking and transfer of the domain name, as requested in the Motion for Temporary Restraining Order would result in irreparable injury to Plaintiff.

...

...

1 11. Because notice to the Defendant would result in immediate irreparable injury to the  
2 Plaintiff, the Plaintiff has made no effort to notify the Defendant of its request for a Temporary  
3 Restraining Order.

4 DATED: November 9, 2011

5  
6   
7 Laraine Burrell

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GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169  
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# **EXHIBIT 2**



Lauri S. Thompson (Bar No. 6846)  
Laraine Burrell (Bar No. 8771)  
Shauna Welsh (Bar No. 11320)  
3773 Howard Hughes Parkway  
Suite 500 North  
Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002

Counsel for Switch Communications Group LLC

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Switch Communications Group, LLC, a  
Nevada limited liability company,

Plaintiff,

v.

Dorian Banks, an individual,

Defendant.

Case No.

**DECLARATION OF THOMAS  
MORTON IN SUPPORT OF  
PLAINTIFF'S APPLICATION FOR  
TEMPORARY RESTRAINING ORDER  
AND MOTION FOR PRELIMINARY  
INJUNCTION**

I, Thomas Morton, declare under penalty of perjury under the laws of the United States that the facts contained herein are of my personal knowledge, and if called upon, I could and would competently testify to them.

1. This declaration is submitted in support of Plaintiff's Application for Temporary Restraining Order and Motion for Preliminary Injunction.

2. I am the general counsel, and I have been employed by Switch Communications Group L.L.C. ("Switch") since April 1, 2008.

3. Switch builds and operates the industry leading data center and technology ecosystems.

4. Switch is well known within the industry. Switch provides superior colocation, connectivity, and cloud services for national and multi-national companies, government agencies and other organization conducting mission critical business. When the latest

planned expansion is completed, Switch will operate one of the largest commercially available and independent technology ecosystems in the world.

5. Switch owns a number of SWITCH marks, and has obtained federal mark registrations for the SWITCH Marks, including but not limited to:

- (a) SWITCH COMMUNICATIONS GROUP for providing telecommunications connections to a global computer network and colocation services (U.S. Reg. No. 3,229,168);
- (b) SWITCH T-SCIF for providing telecommunications connections to the internet and colocation services (U.S. Reg. No. 3,547,908);
- (c) SWITCH WDMD for colocation services (U.S. Reg. No. 3,540,816),
- (d) SWITCHNAP for providing telecommunications to the internet and colocation services (U.S. Reg. No. 3,547,909),
- (e) SWITCHNAP WORLD for providing telecommunications connections to the internet and colocation services (3,880,400),
- (f) SWITCHFORCE, for security guard services, designing security systems for others, security surveillance services, guard night-watch services, alarm center services, mobile and stationary security guard services, alarm rescue services, alarm rescue services; photographic surveillance services, detective agencies; interior decoration consultation, engineering and legal counseling services; development of bar-code systems; computer programming for others; computer software design for others, up-dating and maintenance of computer software (U.S. Reg. No. 3,942,121),
- (g) SWITCHSAFE for computer disaster recovery services (U.S. Reg. No. 3,946,128),
- (h) SWITCHWORKS for design and installation of computer hardware and software systems for others (U.S. Reg. No. 3,942,079),

- (i) SWITCHMOD for colocation facility development services (U.S. Reg. No. 3,984,525),
- (j) SWITCH L.D.C. for providing management of building operation systems; computer software and hardware for energy use management, air conditioning and energy usage monitoring and management systems (U.S. Reg. No. 3,984,524), and
- (k) SWITCHMACRO-MOD for colocation facility development services (U.S. Reg. No. 3,984,966).

None of these federal mark registrations has been abandoned, canceled or revoked.

6. Since Switch began operating in 2003, Switch has continuously used the SWITCH marks in connection with advertising and promoting the SWITCH brand in the United States and around the world.

7. Switch has spent substantial sums of money to advertise and promote the SWITCH Marks in print, broadcast media and on the Internet through the Switch web site, accessible throughout the United States and around the world at <switchnap.com>. In addition, Switch has made extensive use of the SWITCH Marks on, among other things, providing telecommunications to the internet and colocation services, and security guard services, designing security systems for others, and security surveillance services.

8. Based upon its federal trademark registrations and extensive use, Switch owns the exclusive right to use the SWITCH Marks in connection with services related to owning and operating technology ecosystems.


9. No other entities are legitimately using any of the SWITCH marks in the United States for the provision of a data center and technology ecosystem. Further, Plaintiff continuously takes steps to ensure that any infringing uses of its federally registered marks cease immediately.

10. Plaintiff's mark was famous prior to Defendant's registration and commercial use of the Infringing Domain Names <switch.net> on October 15, 2011.

11. I was notified directly by a Switch employee that she was contacted by Defendant by phone on or about October 31, 2011 for the purpose of offering to sell the domain name <switch.net> to Switch. I then contacted the Defendant directly and had several email discussions with the Defendant in which he continued to offer to sell the domain name to Switch for approximately \$3,700. Attached as **Exhibit 1** are accurate copies of the emails between myself and the Defendant.

12. Defendant also informed me in his emails that if Switch did not purchase the domain name from him, he would sell it to another group. See **Exhibit 1** attached.

Executed this 09<sup>th</sup> day of November, 2011, at Las Vegas, Nevada.

  
Thomas Morton

# **EXHIBIT 1**

**Burrell, Laraine (Assoc-LV-LT)**

---

**From:** Dorian Banks [dbanks@metrobridge.com]  
**Sent:** Wednesday, November 02, 2011 11:56 AM  
**To:** Thomas Morton  
**Cc:** Brian Boles  
**Subject:** RE: Domain Name Switch.net

That does sound reasonable but I am better off to take money in hand with another group or even defend it myself.

With your offer I receive either \$0 or \$3700.

With another group I receive \$3700.

Defending myself I either retain the domain or lose approx \$9700.

\$3700 for this domain is an amazing price. You guys can easily defend the UDRP with one link:

<http://tess2.uspto.gov/bin/showfield?f=doc&state=4009:n2q4sm.2.1>

So, that being said, if you want to take over my Enom account containing the switch.net domain for a payment of \$3700 right now, I will do that. If not I understand and will pursue one of the other options I have.

Dorian

---

**From:** Thomas Morton [tmorton@switchlv.com]  
**Sent:** Wednesday, November 02, 2011 11:48 AM  
**To:** Dorian Banks  
**Cc:** Brian Boles  
**Subject:** [SPAM] RE: Domain Name Switch.net

Dorian,

Apparently title cannot be transferred to us at this time. However, we remain interested in the Domain Name and are willing to work with you on resolution of this issue. Here is what I propose:

1. We will undertake defense/resolution of the WIPO action at our expense.
2. The current escrow will stay open pending the resolution of that action. This way you are assured of payment once the domain is cleared.
3. We will point the domain to our servers - which should help the defense of the action.

Does this sound reasonable and fair?

All the best,

Thomas  
Thomas Morton

General Counsel  
Switch  
702-267-6739  
tmorton@switchnap.com

-----Original Message-----

From: Dorian Banks [mailto:dbanks@metrobridge.com]  
Sent: Wednesday, November 02, 2011 11:37 AM  
To: Dorian Banks; Thomas Morton  
Cc: Brian Boles  
Subject: RE: Domain Name Switch.net

I have verified with escrow.com that they will handle this transaction even with the registrar freeze in place (they have done so before).

Please let me know asap as if you want to cancel I now have another group that will take and defend the name based on their foreign trademark of "Switch".

Thanks,

Dorian

---

From: Dorian Banks  
Sent: Wednesday, November 02, 2011 11:24 AM  
To: Thomas Morton  
Cc: Brian Boles  
Subject: RE: Domain Name Switch.net

Well, turns out I cannot push the domain to your account as it is a "registrar freeze" state.

The only alternative is to give you my Enom account info that contains that domain and then you can change the password on it...essentially making it your own at that time.

The Whois record appears frozen as well.

Let me know if this would satisfy the transaction with you or you choose to abandon it.

Thanks,

Dorian

---

From: Thomas Morton [tmorton@switchlv.com]  
Sent: Wednesday, November 02, 2011 11:14 AM  
To: Dorian Banks



Cc: Brian Boles  
Subject: [SPAM] RE: Domain Name Switch.net

Our user name is Redline1973. Just let me know if you need anything else.

All the best,

Thomas  
Thomas Morton  
General Counsel  
Switch  
702-267-6739  
tmorton@switchnap.com

-----Original Message-----

From: Dorian Banks [mailto:dbanks@metrobridge.com]  
Sent: Wednesday, November 02, 2011 10:39 AM  
To: Thomas Morton  
Subject: RE: Domain Name Switch.net

Can you give me the name of your Enom account and I can 'push' the domain in to it? This is by far the easiest process.

Thanks,

Dorian

---

From: Thomas Morton [tmorton@switchlv.com]  
Sent: Wednesday, November 02, 2011 10:01 AM  
To: Dorian Banks  
Subject: [SPAM] RE: Domain Name Switch.net

You should be receiving an updated notice from Escrow.com.

All the best,

Thomas  
Thomas Morton  
General Counsel  
Switch  
702-267-6739  
tmorton@switchnap.com

-----Original Message-----

From: Dorian Banks [mailto:dbanks@metrobridge.com]  
Sent: Wednesday, November 02, 2011 9:51 AM  
To: Thomas Morton

Subject: RE: Domain Name Switch.net

I received your escrow.com transaction but you did not follow my instructions below so I cancelled the transaction.

Dorian

---

From: Thomas Morton [tmorton@switchlv.com]  
Sent: Wednesday, November 02, 2011 6:25 AM  
To: Dorian Banks  
Subject: [SPAM] Re: Domain Name Switch.net

Dorian,

Thank you. Can you please send me a copy or link to the current domain ownership dispute filings. Thanks so much.

Sent from my iPhone

On Nov 2, 2011, at 12:48 AM, "Dorian Banks" <dbanks@metrobridge.com> wrote:

> I apologize for the delay, had very late meetings and was not near a computer.

>

> Please initiate an escrow.com transaction for \$3700 with transaction fees payable by the purchaser with a 2 day inspection period. The email address for my account is dorianbanks@gmail.com which matches the WHOIS for the domain.

>

> Thanks Thomas!

>

>

> Dorian

>

>

>

>

---

> From: Thomas Morton [tmorton@switchlv.com]

> Sent: Tuesday, November 01, 2011 5:33 PM

> To: Dorian Banks

> Cc: Missy Young; Brian Boles

> Subject: RE: Domain Name Switch.net

>

> Dorian,

>

> It was a pleasure to speak with you this evening. This email will confirm Switch's willingness to purchase the switch.net domain name for \$3,700 (plus ancillary acquisition costs of up to \$200). I will look forward to your confirming email this evening.

>

> As discussed during our call, we can use Escrow.com tomorrow morning to complete the transaction. Alternatively, since Enom is your current registrar we can also utilize their transfer process.

>

> I have looped in Brian Boles who will be able to assist with the technical aspects of the transfer.

>

> All the best,

>

> Thomas

> Thomas Morton

> General Counsel

> Switch

> 702-267-6739

> tmorton@switchnap.com

>

> From: Thomas Morton

> Sent: Tuesday, November 01, 2011 5:13 PM

> To: 'dbanks@metrobridge.com'

> Cc: Missy Young

> Subject: Domain Name Switch.net

>

> Mr. Banks,

>

> Good afternoon. Per my voicemail, I am contacting you to follow up on your correspondence with Missy Young of Switch regarding the potential transfer of the domain name Switch.net. Could you please call me at your convenience to discuss this item? My contact information is set forth below for your reference.

>

> All the best,

>

> Thomas

> Thomas Morton

> General Counsel

> Switch

> 702-267-6739

> tmorton@switchnap.com<mailto:tmorton@switchnap.com>

>

# **EXHIBIT 3**

Truth

in Technology

  
**switch**

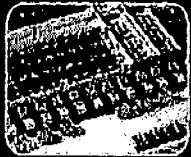
THE SUPERNAPS ... THE WORLD'S BEST DATA CENTERS



WHY SWITCH?



TIER "ELITE"



**SUPER|NAPS**  
COLOCATION



**ecolocation**



CONNECTIVITY



ALL THINGS SWITCH



**switch|CLOUD ICE**



**switch|MOD**



INDEPENDENCE  
AS A SERVICE



VIDEOS

NEWSROOM

CONTACT US

AUP

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# **EXHIBIT 4**

# Better-Whois.com

...SEARCH ALL DOMAIN REGISTRARS

## switch.net is Reserved

Registrar: ENOM423 INCORPORATED

Status:  
clientTransferProhibited

Domain options / additional information: *(Click below to expand)*

- + if you own this domain...
- + if you are trying to register/buy this domain...
- + if you are researching this domain...

[Querying whois.verisign-grs.com]

[whois.verisign-grs.com]Whois Server Version 2.0Domain names in the .com and .net domains can now be registered with many different competing registrars. Go to <http://www.internic.net> for detailed information. Domain Name: SWITCH.NET

Registrar: ENOM423 INCORPORATED

Whois Server: whois.enom423.com

Referral URL: <http://www.enom423.com>

Name Server: No nameserver

Status: clientTransferProhibited

Updated Date: 19-oct-2011

Creation Date: 15-oct-2011

Expiration Date: 15-oct-2012NOTICE: The expiration date displayed in this record is the date the registrar's sponsorship of the domain name registration in the registry is currently set to expire. This date does not necessarily reflect the expiration date of the domain name registrant's agreement with the sponsoring registrar. Users may consult the sponsoring registrar's Whois database to view the registrar's reported date of expiration for this registration.

Sponsored Link

Don't let your customers forget you! Aweber can help...  
Automate your business and boost sales with this easy to use service.

[Querying whois.enom423.com]

[whois.enom423.com]

=====

Domain name: switch.net

Registrant Contact:

Dorian Banks ()

Fax:

Home page  
Link-to-Us  
Contact Us

### Featured Registrar

Register a domain name with **Register.com** for only \$20. Includes:

- Free starter web site
- Free web forwarding
- Free e-mail forwarding
- Free domain locking
- Name portfolio manager
- Dynamic DNS service

[Click here for discounted rate.](#)

Domain Registrars  
@Com Technology LLC  
000Domains.com  
007Names, Inc.  
1eNameCo  
123 Easy Domain Names  
123 Registration, Inc.  
1dni.com  
1st Domain.net  
4Domains.com  
Active ISP ASA  
Address Creation  
Aidomains.com  
Alice's Registry, Inc.  
Alldomains.com, Inc.  
America Online, Inc.  
Ascio Technologies, Inc.  
ATLNTD.com  
AWRegistry  
BB Online UK Ltd



**Administrative Contact:**

Dorian Banks (dorianbanks@gmail.com)  
+1.6043516200  
Fax:  
1030 W. Georgia Street  
Suite 918  
Vancouver, British Columbia V6E2Y3  
CA

**Technical Contact:**

Dorian Banks (dorianbanks@gmail.com)  
+1.6043516200  
Fax:  
1030 W. Georgia Street  
Suite 918  
Vancouver, British Columbia V6E2Y3  
CA

**Status:** Locked

**Name Servers:**

dns1.name-services.com  
dns2.name-services.com  
dns3.name-services.com  
dns4.name-services.com  
dns5.name-services.com

**Creation date:** 15 Oct 2011 11:32:00  
**Expiration date:** 15 Oct 2012 11:32:00

**Get Noticed on the Internet! Increase visibility for this domain name by listing it at [www.whoisbusinesslistings.com](http://www.whoisbusinesslistings.com)**  
==--==

The data in this whois database is provided to you for information purposes only, that is, to assist you in obtaining information about or related to a domain name registration record. We make this information available "as is," and do not guarantee its accuracy. By submitting a whois query, you agree that you will use this data only for lawful purposes and that, under no circumstances will you use this data to: (1) enable high volume, automated, electronic processes that stress or load this whois database system providing you this information; or (2) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, electronic mail, or by telephone. The compilation, repackaging, dissemination or other use of this data is expressly prohibited without prior written consent from us.

We reserve the right to modify these terms at any time. By submitting  
this query, you agree to abide by these terms.  
Version 6.3 4/3/2002

www.	<input type="text"/>	<b>Search</b>
Searches shared database registry and queries appropriate registrar.		